1948.

File No. O.L.R.C Bom/48
Pt. II

Legal Deptt.

A. BRANCH

Subject:— Opinions under the Bombay Land Revenue Code 1879

(for the previous papers please see Pt. I)

P-61
B.

File No. O.L.R.C. Bom./48 Pt. II

113-A

CONTENTS.

Legal Department File No. G.L.R.C. Bom./48, Part II.

Cr. No.	R.L./G.No.	Subject	Pages.
		The Bombay Land Revenue Code, 1879.	
1.	9838 13-10-48.	Section 211. Whether there would be any objection to suo motu direct the Collector to exercise his revisional powers under the Section.	1-2. (not typed)
2.	9782 13-10-48	Section 7. Whether any order or notification under the Section is necessary in order to include in the Province of Bombay the lands covered by the French Lages in India.	3.
3.	9770 13-10-48	Section 62(2). Empowering the Collector to fix the non-agricultural assessment.	3-6.
4.	9241 27-7-48 9418 19-9-48	Section 48. Whether the non-agricultural assessment cannot be levied on the lands which were subjected to assessment at the time of survey etc.	7-14. (not typed)
5.	9726 6-9-48	Section 65. Whether Mr. Bhanji D is bound by clause 18 of the lease & what is permission of the collr. is necy.	15-21.
6.	10814 6-12-48	Whether distinction can be made between the area to be built upon and the area to be kept open for thepurpose of levy of non-agricultural assessment.	23.
7.	9924 23-10-48	Whether Government can levy N.A.A. with retrospective effect.	25.
8.	9436 2-9-48	Section 67. Whether the ant week limit according to the orders of Govt. cannot imposed.	27-28.
9.	9980 13-10-48	Section 211. Whether sanads and agreements can be revised under.	28.
10.	10807 13-11-48.	Whether a stair case room constructed unauthorisedly by lone prior to Govt. orders can be admitted tothe ben fit of the exemption.	27.
11.	9977 30-9-48	Section 65. Whether Shri. Nemboi is liable to must be evicted from theland under the section on the ground that he proceeded with the construct on of the building without the permission of the Collector.	29-41

15/6

Suk 15/6

12.	12001 17-11-48	Section 5(4). Whether there would be any objection to disposal of cases of re-restoration of houses or other properties purchased by Govt. on nominal bids	43.
13.	11115 26-11-48	Whether a President of Dn.B. can execute a cased in the presence of two witnesses.	45.
14.	11673 9-12-48	Whether the order of the Mamlatdar can be set aside and Bai Ganga's name be entered in the Record of Rights.	47-48.
15.	11981 16-12-48	Removal of unauthorised structure - whether it will involve Govt. into unnecessary Civil Litigation.	49-53.
16.	12084 18-12-48	Recovery of arrears from Grain Depots, whether coercive measures can be adopted.	55.
17.	12064 21-12-48	Section 56. Levy of the fine for renewal of permission for n.a. use, whether fine can be levied.	57.
18.	12129 21-12-48	Section 95-156-C. Whether the holders of lands can be treated as occupants pending the introduction of a survey and settlement.	59.
19.	9831 16-9-48	Requesting the R.D. to forward a copy of the Hirasapatra & pps underlying it.	61.
20.	12136 27-12-48	Section 5(16) and Section 65. Interpretation of the word 'Mirasdar'. Whether Mr. X is the occupant for the purposes of the Section 65.	65.

GVV
7.6.50.
5 c.

Office of the R.L.A.

The question referred to the R.L.A. for opinion is whether any order or notification under section 7 of the Bombay Land Revenue Code, 1879, is necessary in order to include in the Province of Bombay the lands covered by the French Loges in India.

2. It appears from these papers that the lands covered by the French Loges in question were originally held by the French Government as pálitics sarenjam inams in the villages of Athwa and Katargam in Chorasi taluka. These lands, as will appear from the report of the Commissioner, N.D. at page 39, are S. Nos. 14, 13/2 and 15/1 in Athwa village and S.No. 455 in Katargam village. Under Government Notification, Revenue Department, No. 6176, dated 9th July 1910, issued under section 7 of the Bombay Land Revenue Code, 1879, the villages of Athwa and Katargam which had been included in Chorasi taluka were constituted along with other villages into a Mahal (see pp. 207-209 of the R.D.Volume 223). It would thus appear that all along the lands covered by the French Loges were treated as forming part of the Province of Bombay. No formal order under section 290 of the Government of India Act, 1935, for including them in the Province of Bombay, nor any notification under section 7 of the Bombay Land Revenue Code for including them in any district of the Province would appear to be necessary.

Sd./-
19/10
Remembrancer of Legal Affairs.

U.R. to R.D., No. 9799; dated the 20th October 1948.

GVV
7.6.56.

L.D.R.L. No. 11431 dated 11.9.48.

Under section 82(2) of the Bombay Land Revenue Code, the Collector can revise the non-agricultural assessment in accordance with the rules made in this behalf by the Provincial Government. However, until the existing rates are revised under rule 82 of the Bombay L.R. Rules, the n.a. assessment would have to be recovered at the old rates. The view of the Commr. N.D. as stated in para 3 of his endorsement No. L.R.D. 5021 dated 19.4.48 is correct. The papers may be "seen and returned."

Sd./-

I agree.

Sd./- M.T.A.

A. L. R.

Sd./-
16/10
Remembrancer of Legal Affairs.

to R.D., No. 9770, dated the 19th November, 1948.

S.S6.
a a.

Office of the R.L.A.

Permission under section 65 when land is granted on reclamation for N.A. use.

Bombay Land Revenue Code, 1879, sec. 65.

R.L.A's. opinion H.e. 8314 dt. 10-6-36 and 10407 dt. 28-10-40.

The proposal forthe lease of the Santa Cruz tank to Mr. Rajbalii Mahomed for reclamation purposes was sanctioned by Government in G.O., R.D. No. 267, dated the 28th January 1931, and later on a lease was executed by Mr. Rajbalii in the form sanctioned in G.R., R.D. No. 1266, dated the 15th August, 1924. The object of the lease was that the lessee was to fill in the tank and make it fit for use for non-agricultural purposes. The period of the lease granted to Mr. Rajbalii was 10 years from 1st August 1924 and it expired on 31st July 1934. Under condition 4 of the lease the lessee was empowered to transfer his rights and liabilities over a plot or plots to any third party subject to all the provisions of the lease. However, by his No. L.N.D. 1968, dated the 6th February 1934 the Collector permitted the lessee to sell, lease etc. all the plots free of the conditions of the lease. Taking advantage of this concession Mr. Rajbalii sold the plots to Mr. Jamnadas Mangaldas after expiry of the lease and Mr. Jamnadas Mangaldas sold a plot out of this land to one Mr. Bhanji Deoji.

Mr. Bhanji Deoji desires to build a cinema theatre ontheplot he has purchased and has obtained permissionof the Commissioner of Police for the purpose. After obtaining permission of the Commissioner of Police Mr. Bhanji Deoji has applied to the Collector under section 65 of the Land Revenue Code for permission to use the land for non-agricultural purpose. This permissionhas been refused by

SVV
7.6.56.

the Collector as the septic tank proposed to be build was found objectionable.

It appears that a petition objecting to the construction of a theatre on the premises has been made to Government and in view of this petition, the Collector has submitted the papers to Government for orders in the matter.

Four question have been raised for the consideration of the R.L.A. in this case. They are:-

(1) Whether Mr. Bhanji Deeji is bound by clause 12 of the lease.

(2) Whether permission of the Collecto r is necessary under section 65 of L.R.C.

(3) How the owner canbe prevented from constructing the cinema theatre; and

(4) Whether R.L.A.'s opinion No. 3314, dated the 10th June 1936 requires reconsideration

In his opinion No. 10487 dated the 28th November 1940, the R.L.A. opined : "It does not appear that Jamnadas Mangaldas who has become a transferee after the expiration of the lease would be bound by the conditions inthe lease regarding the payment of contribution or the construction of the drain." Clause 12 of the lease does not relate to payment of contrib ution of the construction of the drain. The point raised in this case is not, therefore, concluded by the R.L.A.'s last opinion. Clause 4 of the lease provides that the transferee on such transfer and until the expiry of this lease shall be subject to all the provisions of this lease. Clause 12 of the lease is one of the provisions of the lease. Ordinarily, therefore, the transferee would be bound by clause 12 of the lease until the expiry of this lease. The lease having already expired, clause 12 of the lease will not be binding on the transferee. However, clause 12 is not in the nature of a condition. That clause provides that nothing in this lease shall be construed to exempt the lessee or any transferee under the lessee from obtaining the sanction of the

SVV
7.6.56.

Collector to any proposal to use the land or any portion th reof for non-agricultural purposes. This provision was merely intended to dissipate any doubt the applicability or otherwise of section 65 of the Bombay Land Revenue Code. Obviously, therefore if section 65 of the Land Revenue Code could apply to th land covered by the lease, the applicability of that provision was not excluded by the lease. The main question would, therefore, be whether section 65 of the land Revenue Code would apply.

Section 65 of the Land Revenue Cole would be certainly apply if the land is assessed or tald for the purpose of agriculture. Under the lease for the first five years theland was not liable to any assessment and for the next five years a reduced annual assessment of Rs.100/- was leviable. Under clause 6(5) the assessment on each plot on its actual conversion to non-agricultural purposes was to be fixed at full or reduced rates in accordance with the rules in force at the time of such conversion. It appears that so far no assessment has been levied on the plot in question but that would not mean that the land is not assessed. The lease as granted not mean that the purpose of making te land fit for non-agricultural purposes. There was no provision for agricultural use at all and further in G.R., R.D. No.x 1266/34, dated the 8th June 1934, the Collector has been directed to levy non-agricultural assessment on the whole plot. In the circumstances, it is obvious that the plot must be deemed to have been already assessed for non-agricultural purposes; and in that view section 65 of the Land Revenue Code would have no application.

In these ircumstances permission of the Collector under section 65 would not be necessary. But if it is desired not to allow the

SVV
7.6.56.

occupant to construct a cinema theatre on the land, it would be open to the authority concerned to cancel the license granted for building a cinema theatre. That would be an effective way of stopping the construction of the theatre.

Assistant Secretary, R.D., appears to consider that in view of the Bombay High Court's decision in Shivpalsing vs. Secretary of State, 26 Bom. L.R. p. 371, the R.L.A.'s opinion No. 3514 dated 10th June 1936 requires to be reconsidered. There is no conflict between the R.L.A.'s opinion and the decision in Shivpalsing vs. Secretary of State. What was decided in that case was that when due enquiry has been made then the Collector can either grant or refuse permission. Assistant Secretary, R.D., seems to be under the impression that the R.L.A. has in that case also stated that even an arbitrary refusal of permission under section 65 of the Land Revenue Code would be permissible. What the R.L.A. stated in that opinion is, that "discretion given to the Collector in this respect is unfettered and the exercise of it in any manner he deems fit cannot be challenged in a Court of Law." But in all such cases the discretion cannot be exercised capriciously or arbitrarily. In the circumstances that opinion of the R.L.A. requires no re-consideration.

Sd./-

Remembrancer of Legal Affairs.

U.R. to R.D., No. 8784, dated the 16th September, 1948.

CVV
7.6.50.
4 c.

Office of the R.L.A.

Levy of non-agricultural assessment on unauthorised n.a. use ——
Land Revenue Code, 1879.
Section 48
Rule 85 ;
Amendment of ——

If a building is unauthorisedly constructed leaving an open space, that open space cannot be construed as being used for non-agricultural purpose on the basis of the proportion of the area to be built upon and the area to be kept open as laid down in G.R. No. 1969/45, dated the 14th July 1945; for that proportion fixed by Government can be imposed as a condition while granting permission for non-agricultural use and the person applying for such permission expressly or impliedly admits the use of the whole area for a non-agricultural purpose and the question of making any distinction between the area tobe built upon and the area to be kept open for the purpose of the levy of non-agricultural assessment would not arise insuch a case. But in the case of land unauthorisedly used for non-agricultural purpose, the extent of the area thus used will have to be determined with reference to the actual use thereof and the non-agricultural assessment will havete beleried on the area thus determined, there being no question of any express or implied consent of the occupant using the land for non-agricultural purpose. Consequently, theanalogy tried to be drawn from G.R. No. 1969/45, dated the 14th July 1947 would be quite inapplicable. In these circumstances, an amendment of the law would seem expedient.

Sd./-
29/10
Remembrancer of Legal Affairs.

U.R. to R.D., No. 10814, dated the 30th October 1948.

svv
7.6.56.
4 c.

L.D.R.I. No. 11433 dt. 11-9-48.

Submitted.

By G.R.R.D. No. 2974/45, dated the 29th Jan. 1947 the standard rates of non-agricultural assessment for Bhusawal town and the suburbs of Satara and Kondari in East Khandesh were sanctioned for a period of 10 years from 1-8-1948 R.D. states that the draft notifications at pp. 83-85 ante forwarded by the Commissioner could not be issued in view of the High Court ruling that Government cannot legally alter or revise the standard rates of n.a.s. That Department therefore states that in view of the Bombay Land Revenue Code (Amendment) Act, 1948, Government can levy n.a.s. with retrospective effect from 1-8-48, the date from which the rates were sanctioned in G.R. referred to above. R.D. propose to publish the notifications after u.o.r. to the R.L.A. who is requested to confirm that the R.D. view is correct.

'Seen and returned. The view taken at 'A' of the R.D. note at p. 113 ante is correct.

Sd/-
20/10

I agree,

Sd./-
A.L.R.

Sd./-
Remembrancer of Legal Affairs.

U.R. to R.D., No. 9924, dated the 23rd Oct. 48.

SVV
7.6.56.
4 c.

Office of the R.L.A.

It appears that the land measuring 10 acres and 17 gunthas out of S.Nos. 109 and 164 of Tungarli, taluka Mawal, was acquired in the year 1910 for G.I.P. Railway servants in Lonavla. A strip of this land was relinquished by the Railway as it was not required for the purpose for which it was acquired. This strip of land was sold to Mr. P.M.Taraporewalla at a public auction held on 14-12-44 subject to certain conditions. The sale was confirmed by the Collector by his order dated 30th January 1945. One of the conditions of the sale was that the set back limit should 60' from the boundary of the Bombay-Poona Road running on the west of the site in accordance with the ribbon development orders then prevalent. In addition to this condition the Collector has now imposed two additional conditons one of which requires that no building shall be constructed on Bombay-Poona Road within 125' from the centre of the Road. Mr. Tarapore walla is not agreeable to comply with the revised set back limit as it is not in accordance with the conditions of sale. The Commissioner agrees with the Collector that the revised set back limit cannot be insisted upon in this case and in similar other cases to the prejudice of the purchasers. R.D., however, states that neither possession of the land is given nor agreement in xxx form H is executed and in view of the orders contained in para 3 of G.R.R.D., No. 10204/24 dated 7-9-1946 and G.R.R.D., No. 10204/24-XIII dated the 27-6-1945 read with G.R., P.W.D., No. 660/36 dated 27-6-1945 the marginal limit of 175' canbe imposed in this and similar other cases. The R.L.A. is requested ten advise whether the set back limit according to the recent orders can be imposed in such cases.

P.T.O.

2. The important conditions subject to which the auction sale of the land was sold are:-

Condition (9) :- The purchaser shall previously to entering occupationof the land obtain thepermission in writing of the Mamletdar under section 60 of the L.R. Code. Such permission will only be accorded on the purchaser's paying the full amount due under the sale and on his executing the agreement in form 'H' under the L.R. Rules.

(10) :- The purchaser will have to pay to Government as annual non-agricultural assessment at Rs. 50/- and Rs.2/- per acre on the built up and unbuilt areas respectively which is subject to revision after 30 years, etc.

(11) :- All building plans whether of new buildings or of additions and alterations to the existing buildings must receive the Collector's approval beforethe construction work is commenced in addition to the Local Authorities' sanction i.e., the Lonavla Municipality.

(15) :- No structure shall be erected within 50' of the Bombay-Poona Road. No structure shall also be erected within 15 feet from the boundary of a plot on any side of it provided that special permissionmay be granted for the erection of coach houses stables and privies and other non-residential buildings in accordance with the circumstance of the case.

3. Section 67 of the Land Revenue Code, 1879, provides that nothing in the last two preceding sections shall prevent the granting of permission aforesaid on such terms or conditions as may be prescribed by the Collector subject to any rules made in this behalf by the Provincial Government. It is clear from this provision that conditions can be imposed regarding the set backs while granting permissions under section 65 to use the land for a building purpose. It appears from the report of the Collector, Poona, at p. 1 ante, that the land

was disposed of to Mr. Taraporewalla in auction sale after it was laid out in plots by the consulting Surveyor to Government. This means that the land was disposed of under rule 42 of the Bombay Land Revenue Rules for building purposes. Under clause (e) of rule 43(1) where the land has not been assessed, the Collector shall fix the assessment in accordance with the principles laid down for the assessment in rules 51 to 56 and the provisions of the said rules shall be as may be apply. The levy of non-agricultural assessment on a land disposed of under rule 42 is not quite essential for the purpose of determining whether the land has been allowed to be coverted for a non-agricultural purpose. The very fact that the land has been disposed of for building pruposes under rule 42 implies that the permission to convert the land to a non-agricultural purpose is granted. That being so, the question of Mr. Taraporewalla applying under section 65 of the Bombay Land Revenue Code for converting the land to a non-agricultural purpose would not arise and section 67 cannot be invoked for imposing a condition that no building should be constructed on the Bombay-Poona Road within 125' from centre of the road in view of condition 15.

4. The condition subject to which the auction sale was held are binding both on the auction purchaser and on Government. According to condition 15 the set back is limited only to 50' from the Bombay Poona Road. Consequently it would not be open to Government to enlarge this set back by imposing a condition that no building or structure should be constructed within 125' from the centre of the Bombay-Poona Road. It is true that no agreement in form H has been executed by the auction purchaser, but the auction sale has already been

SVV
V.C.56.
4.9.

confirmed by the Collector. Consequently with the exception of one formality viz. the execution of regular sale - ~~sale~~ deed under section 175 of the Government of India Act, 1935, which is ver material, the sale is concluded. If Government desires to take advantage of this defect viz. the absence of sale-deed, to enforce the condition of 175' set back, Mr. Taraporewalla may be informed that he should conform to this set back, otherwise the sale would be cancelled by Government for want of non-compliance with the previsions of section 175 of the Government of India Act, 1935. It is however, for Government to consider whether they should have recourse to this to enforce a new condition even though the auction was held and the sale was confirmed in f vour of Mr. Taraporewalla.

Sd./-
1/9
Remembrancer of Legal Affairs.

R.D. to Revenue Department No. 8456; dated the 2nd September, 1948.

SVV
Y.C.SC.
4 c.

Office of the R.L.A.

Whether Canada & agreements can be revised under S. 211, Land Revenue Code, 1879.

Throughout the judgment, their Lordships have confirmed themselves to the facts of this particular case. The passage side-lined red in the Judgment at p. 16 read with the preceding paragraph shows clearly hat their Lordships decided. It was held tht the Government Resolution of 11st April 1930, even if it impliedly treated the agreement of 1915 as broken or cancelled was not ultra vires of the Governor in Council (Council) acting under section 211 of the Land Revenue Code, because the agreement of 1915 has become useless and unenforceable by alterations and extensions which the repondent himself had (and) made unauthorisedly in 1920 and in subsequent years. Only on this narrow ground their Lordships held that the Resolution of 1930 was not ultra vires. Their Lordships have not decided the broad question whether such an agreemen t could be revised or annulled by Government in exercise of the powers under section 211 even where it has not become useless or unenforceable as in the present case. With regard to such agreements the legal position remains the same as before until it is altered by an amendment of section 211.

Sd./-
11/10
Remembrancer of Legal Affairs

D.O. to R.D., No. 9880; dt. 13th October 46.

SVV
7.6.86.

Office of the R.L.A.

Levy of non-agricultural assessment for additional storey. Land Revenue Code, 1879.

The objects of the G.R. R.D. No. 7561/45 dated the 15th March 1948 is to encourage the construction of an additional storey in the Bombay Suburban District to provide additional residential accommodation. A staircase room constructed unauthorisedly long prior to the G.R. cannot be admitted to the benefit of the exemption because it is not a storey of the kind contemplated by the G.R. and the exemption is obviously intended, to apply prospectively.

Sd./-
17/11
Remembrancer of Legal Affairs.

U.R. to R.D., No. 10367, dated the 20th November 1948

SVV
7.6.86.
d.c.

Office of the R.L.A.

Land Revenue Code, 1879. Sections 65 and 66.

It appears that one Mr. Rambhai Dayalji of Vapi, Taluka Pardi, District Surat, applied on 10-10-1946 to the Collector for permission to use his agricultural Survey No. 241/A/1/2 of Vapi for a building purpose and this application was returned to the petitioner by post on 7.11.1946 by the Collector on the ground that it did not bear the necessary court fee stamp. It appears that this application was not delivered to Rambhai and was received back by the Collector from the Dead Letter Office. It was thereafter sent to village Officer who, is is stated, personally returned it to the petitioner on 4.1.1947. However, the applicant proceeded with the construction of the building even though he was served with a notice by the Circle officer on 30.1.1947 asking him to stop the construction of this building. It is xxx alleged by Rambhai that he did not receive any intimation from the Collector within three months from the date of his application and consequently he was entitled to proceed with the construction of the building on the assumption that the Collector did grant permission to construct the building. Rambhai has built in contravention of the Government rules by not observing the open margin condition apparently communicated to him in 1940 when he had applied for a similar permission, which was refused on his declining to comply with the margin condition. The question raised for R.L.A.'s consideration is whether Rambhai is liable to be evicted from the land under section 66 of the Land Revenue Code on the ground that he proceeded with the construction of the building without the permission of the Collector.

2. The effect of the proviso to section 65, as interpreted in Shivpalsingh v. The Secretary of State (36 Bom. L.R. 374) is that, where orders were not passed for a period of three months either from the date of the application or from the date of the acknowledgment, the applicant was entitled to proceed as if the permission

applied for has been granted to build according to the terms of his application. In the present case it is admitted that the applicant did apply on 10-10-1946 and, unless it is proved that the Talati returned the application to Mr. Rambhai personally on 4.1.1947, as entered in the Barnishi register, there is nothing to prove that there was any intimation from the Collector to Rambhai either refusing or granting permission wit in three months from the date of thes application. It is true that the Talati has made an entry in the Barnishi register that he personally returned the application to Rambhai on 4.1.1947 as directed by the Collector. But in his statement the Talati has stated that he returned the appliation to Rambhai in November 1946 which statement is entirely contradictory to the entry made in the Barnishi register. Consequently, it is doubtful whether the entry made in the Barnishiregister would be accepted as true. In the absence of any unimpeachable evidenceof intimation given to the applicant within three months from the date of his application to the Collector, it would be difficult to hold that the action of Rambhai in constructing the building was unauthorised and contrary to section 65. The condition regarding themargin is prescribed by Government under an executive order and, unless that condition is imposed under section 67 of the Bombay Land Revenue Code while granting permission under sectio 65 it would not be enforceable. Consequently, no action can be taken against Rambhai for non-compliance with the margin condition.

Sd./-
29/9
Remembrancer of Legal Affairs.

U.R. to R.D., No. 9257, dated the 30th September, 1948.

SVV
7.6.56.
4 c.

R.L. No. 149080 dt. 26-10-48.

R.D. states that three S.Nos. and 7 houses of Mr. Mahipat Tanivan were purchased by Government on a nominal bid of Re. 1/- in an auction sale held on 19-10-1936 for the realisation of tell bar arrears due to Government. The defaulter has applied to the Commissioner on 1-12-1947 for the restoration of these of these properties. Out of 3 S.Nos. and 7 houses, one S.No. and four houses were handed over to one Mr. Hansraj, in a compromise decree passed in a suit filed by him against Government R.D., therefore, considers that the question of restoring this property does not arise. The Govnr. C.D. is of the opinion that although orders contained in G.R., R.D. No. 7204/38 dated 28-8-47 are specially in respect of lands and it would not be correct to stretch the meaning of the word "land" used in the G.R. in such a way as to include houses or things attached or permanently fastened to anything attached to earth as is done in section 3(4) of the Land Revenue ~~Code~~ Code, there would be no objection to dispose of cases regarding restoration of houses or other properties purchased by Government on nominal bids in such cases on the lines of the G.R., R.D. states that the principle enunciated by the High Court in Tundu Dhanaing V. Province of Bombay, 49 Bom. L.R., 804, applies to cases in which the purchase was made on no nominal bid for realisation of any other dues which are recoverable as arrears of land revenue. In the circumstances, it is proposed to ask the Govnr. to dispose of this case on the analogy of the orders contained in the G.R.

Sd/- P.S.K.
6/12
A. L. R.

SVV

Office of the R.L.A.

Execution of sanad by the President of the District Local Board.

Bombay Land Revenue Rules. Rule 87(b).

The sanad in form M under rule 87(b) of the Bombay Land Revenue Rules, 1921 is in the nature of an agreement and the attestation of such sanad is testification to the execution thereof by the parties to the sanad. The sanad in form M provides for execution by each party and attestation thereto separately. Consequently the execution of the sanad by the President in the present case, in the presence of two witnesses would be sufficient and it is not necessary that the president should execute the sanda in the presence of the Mamlatdar particularly when his execution of the sanad would have to be in conformity with section 42 of the Bombay Local Boards Act, 1923 leaving no room for doubting his execution of the sanad.

Sd./-
25/11
Remembrancer of Legal Affairs

U.R. to R.D., No. 11116; dated the 26th November 1948.

GVV
7.6.56.
d.c.

In para 5 of his endorsement, the Comml N.D. observes that in the absence of the sanad showing the terms and conditions on which the original n.a. permission was granted, and any other positive evidence to show that the common plot C.T.S. No. 2282 was required tobe kept open, the removal of the structure through Govt. agency, possibility involving moving Government in unnecessary litigations seems hardly worth while, and that the parties maybe left to seek their remedy in a Court of Law.

From the sketch at p. 51 of the papers it is clear that the land bearing City Survey No. 2282 (shown in blue chalk) on which the hut was construct is part of the private street land and a finding to that effect was given by the Bom. Revenue Tribunal in its order dt. 30th March 1943. From the Extract of the Property Register, it appears that C.S. No. 2282 measuring 964 sq. yds. if of the joint ownership of the holders of lands bearing C.S. Nos. 2286 to 2289, 2292 to 2294, 2296 to 2300 and 2301 to 2312 (vide p. 38), and in respect of this non-agricultural assessment is fixed.

According to the entry in the Property Register, Chhibabhai Kesurbhai, holder of the C.T.S. Nos. 2287 and 2288 is one of the joint owners of C.T.S. No. 2282 which is private street land. C.T.S. No. 2282 being private street land, would not be the private property of the Crown under section 37(1) of the Bom. Land Revenue Code. Moreover, there is no evidence to prove that C.T.S. No. 2282 was required to be kept open. Under the circumstances Govt. need not resort to sec. 202 of the Bom. L.R. Code. The parties being joint owners, may be left to have their claims settled settled through Court.

Office of the R.L.A.

Removal of structure.

Bombay Land Revenue Code.

Seen and returned.

In the circumstance the view expressed by the Commissioner, N.D., in paragraph 5 of his endorsement No. C.T.S. 1273, dated the 5th August 1948 is correct.

Sd./-
14/12
Remembrancer of Legal Affairs.

U.R. to R.D., No. 11861, dated the 14th December 1948.

SVV
7.6.56.
4 c.

Office of the R.L.A.

Recovery of arrears from Grain Depots.

Land Revenue Code.

The dues of the Grain Depots cannot be recovered by having recourse to coercive process and no agreement for such recovery can be validly made unless Government is a party (see section 187 of the Bombay Land Revenue Code.).

Sd./-
17/12
Remembrancer of Legal Affairs.

U.R. to R.D., No. 12064; dated the 18th December 48.

SVV
7.6.56.
4 c.

Office of the R.L.A.

Levy of fine for renewal of a permission for N.A. Use.

Bombay Land Revenue Code, Sections 65 & 66.

The view taken by the Commissioner, Northern Division is correct. Where an application is made for extending the non-agricultural use before the expiry of the period and it is subsequently granted, the grant of such extension would ordinarily be with effect from the date of expiry in which case the question of levy of fine under section 66 read of the Land Revenue Code, 1879 would not arise.

Sd./-
25/12
Commissioner of Legal Affairs.

U.R. to R.D., No. 12136; dated the 21st December 1948.

SVV
7.2.56.
4 c.

Office of the R.L.A.

Bombay Land Revenue Code, 1879. Sections 95, 135-C, 216 and 217.

Sub-section (1)(ii) of section 216 of the Bombay Land Revenue Code, 1879 will have no application since the survey proposed is to be made not under section 95 but under section 135-C. It is true that under section 135-C the costs of survey can be assessed on the land and recovered as a revenue demand; but pending the introduction of a survey settlement the holders of lands cannot be treated as occupants and would not be personally liable (see section 217). The costs of survey can however be recovered under section 150 by forfeiture of the alienated holdings and the holders, being interested in saving forfeiture will readily pay. Consequently, there would be no difficulty in recovering the costs of survey from the holders.

34/-
20/12
Remembrancer of Legal Affairs.

U.R. to R.D., No. 19159; dated the 21st December 1948.

GVV
7.6.56.
4 c.

Office of the R.L.A.

Mr. Liladhand T. Mehta, the petitioner in his petition dated the 26th July 1948 states that the landlord while granting the Miraspatra gives all his proprietary rights to the Mirasdar. Revenue Department has not forwarded a copy of said Miraspatra. Revenue Department is therefore requested to forward a copy of the Miraspatra and a translation in English thereof and the case papers rejecting the petitioner's request for conversion of the land to non-agricultural assessment in the past.

Sd./-
for Remembrancer of Legal Affairs.

U.R. to R.D., No. 8851; dated the 16th September 48.

SVV
7.9.56.
4 c.

Office of the R.L.A.

The word Hireadaris used in two senses. It is used incorrectly to mean a permanent tenant. It is also used, correctly, to mean a person who has the occupancy rights of land that is to say who has the right of land that is to say who is an occupant and not occupancy a tenant (see Vyasacharya vs. Vishnu Vithal; Bom. I.L.R. page 566; at page 572 followed in Shaipad Balvant vs. Nagu Kushaba, A.I.R. 1943, Bombay; page 301 at page 302). In this case there is no evidence to show that Mr. Mehta or his predecessor in the latter Mohdin Chandkhan Naikwadi is the Hireadar in the latter sense that is in the sense of a person who has occupancy rights of the land. On the other hand, the previous history shows that there is a superior holder who is objecting to the conversion of the land to non-agricultural purposes. In these circumstances, it will not be possible to hold that Mr. Mehta is an occupant for the purposes of section 65 of the Land Revenue Code. For under section 3(16) of the Code an occupant means a holder in actual possessionof unalienated land other than a tenant; provided that x where a holder inactual possessionis a tenant the landlord or superior landlord, as the case may be, shall be deemed to be the occupant.

Sd./-
21/12/48.
Remembrancer of Legal Affairs.

U.N. to R.D., No. 12316; dated the 27th December, 1948.

RVV
3.6.56.
4 c.